

First Supplement to Memorandum 97-14

Administrative Adjudication: Telephone Hearings (Comments of ACSA)

Attached is a letter from the Association of California State Attorneys and Administrative Law Judges (ACSA) and other state employee labor organizations concerned that telephonic hearings before the State Personnel Board ought not to be permitted over the objection of the employee whose rights are being determined, even on a showing of good cause. Exhibit pp. 1-2.

Their letter gives the staff concern that the loosening proposed in Memorandum 97-14 is not free from controversy. We may wish to circulate the proposal more widely for comment.

However, we need to address the issue in some form right away, since the Unemployment Insurance Appeals Board (UIAB) problem will become urgent on July 1 when the new Administrative Procedure Act provisions become operative. The staff suggests as a temporary fix that we limit authority to order a telephonic hearing over the objection of a party to UIAB. We would locate the provision in an appropriate place in the Unemployment Insurance Code.

Respectfully submitted,

Nathaniel Sterling
Executive Secretary



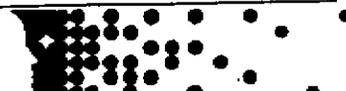
ASSOCIATION OF CALIFORNIA
STATE ATTORNEYS AND
ADMINISTRATIVE LAW JUDGES



PROFESSIONAL ENGINEERS



IN CALIFORNIA GOVERNMENT
Law Revision Commission
RECEIVED



California Association of
Professional Scientists

FEB 26 1997

February 25, 1997

File: _____

TRANSMITTED VIA
FACSIMILE AND U.S. MAIL

California Law Revision Commission
4000 Middlefield Road, Room D-1
Palo Alto, CA 94303-4739

RE: Administrative Adjudication: Telephone Hearings, Memorandum 97-14

Dear Committee Members:

I am writing on behalf of the Association of California State Attorneys and Administrative Law Judges (ACSA), the Professional Engineers in California Government (PECG), and the California Association of Professional Scientists (CAPS) to express their views concerning the February 14, 1997 staff recommendation proposing to add subdivision (c) to Government Code section 11440.30.

ACSA, PECG and CAPS represent state employees in their labor relations with the State of California and regularly appear before the State Personnel Board in providing representation to their members. As recommended, section 11440.30 subdivision (c) would allow a presiding officer to conduct all or part of a hearing by telephone, television, or other electronic means, notwithstanding a party's objection, on a showing of good cause. While the staff recommendation preserves flexibility for hearings of agencies such as the California Unemployment Insurance Appeals Board, this same flexibility is not appropriate for all administrative adjudicative proceedings that are conducted by non-California Administrative Procedure Act agencies. The State Personnel Board (SPB) is not a California Administrative Procedure Act agency.

ACSA, PECG and CAPS recommend that subdivision (c) not be extended to any hearing granted under Government Code sections 19175, 19576, or 19578. Government Code section 19175 permits the SPB to provide a hearing for a state employee rejected during a probationary period. This hearing reviews an action to remove an employee from a probationary appointment.

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Government Code section 19576 permits the SPB to hold a hearing when an employee has been suspended without pay for five days or less or has received a formal reprimand or up to a one step reduction in pay for four months or less. Government Code section 19578 mandates the SPB to hold a hearing whenever an appeal is filed to an adverse action except as provided in section 19576. Hearings held under sections 19576 or 19578 involve review of action taken by an appointing power to discipline an employee and includes formal reprimand, suspension, reduction in salary, demotion and dismissal.

The SPB has been vested with adjudicating power. The SPB is vested with the authority to review an appointing power's action, weigh the evidence, determine the facts and exercise discretion in determining the sufficiency of the charges against an employee. Where a state employee's vested right in his or her civil service position is under attack, due process dictates that as a matter of fair procedure, providing an in-person hearing if requested is appropriate. Due to the subject matter and the recognized property interests involved, SPB hearings under 19175, 19576 and 19578 should be afforded the same due process and fair procedure concerns as adjudicative proceedings conducted under the California Administrative Procedure Act.

Thank you for your consideration of this issue. A representative of ACSA, PECG and CAPS will be present at the California Law Revision Commission meeting on February 27, 1997 if Commission Members have any questions.

Very truly yours,



Gerald James
Labor Relations Counsel
ACSA, PECG, CAPS